



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/168715

PRELIMINARY RECITALS

Pursuant to a petition filed September 16, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on October 07, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly modified the petitioner's prior authorization request for Personal Care Worker (PCW) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Marcie Oakes

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 13, 2015 the petitioner's provider completed a Personal Care Screening Tool (PCST).

3. On June 5, 2015 the petitioner's provider submitted a request for prior authorization of PCW hours based upon the aforementioned PCST. Specifically, the petitioner's provider requested 51.75 hours per week for 53 weeks of Personal Care Worker (PCW) time. This was at a cost of \$68,568.75.
4. The Department reviewed the request and returned the request to the provider stating that the dressing frequency was too high given that one episode of dressing is included in bathing. The Department further stated that the toileting frequency was too high given the amount of time the PCW would be in the home. They also asked for clarifications about the petitioner's behavior that made PCW tasks more time consuming to perform.
5. The provider resubmitted the PCST reducing the toileting and dressing frequency. The provider further stated "wife reports that client can become combative and bossy." "PCW needs time to calm client and redirect his behavior to ensure safe completion of daily task." The provider requested 44 hours per week of PCW time.
6. The Department reviewed the request and again returned the request asking for clarification on the petitioner's behavior that made PCW tasks more time consuming to perform. The Department further indicated that lunch was not supported because there was no PCW schedule attached showing that the PCW was scheduled during lunch. The provider never resubmitted the request.
7. On August 3, 2015 the Department notified petitioner in writing that it approved 33.5 hours per week of PCW time.
8. On September 16, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
9. The petitioner is 75 years old. He lives with family. His son is his PCW. He is diagnosed with Dementia. His functional limitations include bowel and bladder incontinence, endurance and ambulation. He uses a walker.

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code. §DHS 101.03(96m)

The petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

The petitioner’s provider, on behalf of petitioner, originally requested 51.75 hours per week of Personal Care Worker (PCW) time. When the Department asked for clarification the provider modified it’s request to 44 hours per week of PCW time. According to the letter from the respondent, the Department approved 33.5 hours per week of services. At the hearing petitioner requested 44 hours of PCW time.

In determining how many hours of personal care services an individual is allowed, a service provider completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165. The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*; this chart can also be found at the aforementioned website.

In general seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), such as glucometer readings or medication assistance, are also examined.

The first area of contention is eating. The Department reduced the amount of time by 20 minutes per day or 140 minutes per week. They reasoned that the PCW is generally in the home two times per day. The PCW would help with breakfast and dinner, not lunch. The burden is on the petitioner. The Department asked for clarification and a PCW schedule showing that the PCW was giving the petitioner lunch. This was never returned to the Department. I agree with the Department's reduction in this area. The petitioner presented no evidence showing that his PCW comes over at lunch time, and feeds him lunch.

The second area of contention is the petitioner's behaviors. The issue is whether these behaviors make PCW tasks more difficult and time consuming to perform. The petitioner has dementia. The PCST states "wife reports that client can become combative and bossy." "PCW needs time to calm client and redirect his behavior to ensure safe completion of daily task." The Department asked for further clarification and explanation. The Department argues that the medical records do not support additional time. I disagree with the Department. The clinical note from February 23, 2015 states that the petitioner has Dementia with behavioral disturbance. Although they note that his behaviors were stable with medication at that time, they do not specify what they mean by stable. The office visit from March 19, 2014 states that the petitioner is on the active problem list as a low priority. An order indicates that the PCW is able to assist with behavioral issues. Nearly every note indicates that the petitioner has behavioral issues. I agree that his behaviors appear to have improved. However, they still persist. Thus, the petitioner is entitled to additional PCW time due to his behaviors. The allowable time in this area is an additional 25% of the total ADL time.

There are no further issues with respect to the PCW time. The petitioner's PCW time should be as follows:

- Bathing – 210 minutes per week
- Dressing – 140 minutes per week
- Grooming – 210 minutes per week
- Eating – 280 minutes per week
- Mobility – 140 minutes per week
- Toileting – 140 minutes per week
- Incontinence care – 210 minutes per week
- Transferring – 210 minutes per week
- Medication Assistance – 70 minutes per week

If the petitioner did not have difficult behaviors, the total ADL time would be 1610 minutes per week. This time is increased by one quarter or 25% due to the petitioner's difficult behaviors. **Thus, the total ADL time is 2012.5 minutes per week.**

Per the on-line Provider Handbook, topic 3167, additional time may be allocated for incidental cares, such as light meal preparation, incidental laundry, or light cleaning after bathing or grooming petitioner. For an individual who does not live alone, time equal to 1/4 of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated. The petitioner is entitled to 2012.5 minutes per week of PCW time for assistance with ADLs. One quarter or 25 % of this ADL time is **2515.625 minutes per week (2012.5 * 1.25)**. This amounts to 41.92 hours of PCW time per week. PCW time is allocated in 15 minute increments. I rounded up giving the petitioner **42 hours per week of PCW time**.

I note to petitioner that the provider will not receive a copy of this Decision. In order to have the PCW hours approved here, petitioner must provide a copy of this Decision to the provider. Then, the provider must submit a *new* prior authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

1. DHS incorrectly modified the PCW hours requested.
2. The petitioner requires 42 PCW hours weekly for the current authorization period.

THEREFORE, it is

ORDERED

That the petitioner's provider is hereby authorized to provide the petitioner with 42 PCW hours weekly for the period beginning June 12, 2015, and to submit its claim, along with a copy of this Decision and a new prior authorization request, to ForwardHealth for payment. In all other respects, the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

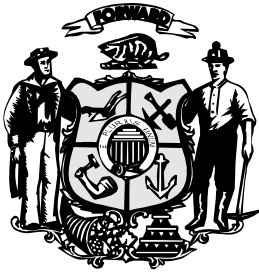
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

...

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of October, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 16, 2015.

Division of Health Care Access and Accountability